

STATE OF MICHIGAN  
COURT OF APPEALS

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KIMBERLY J. BANKS, Conservator of  
BRAEJON BANKS, Minor,

UNPUBLISHED  
March 27, 2007

Plaintiff-Appellant,

v

HENRY FORD HOSPITAL, a/k/a HENRY FORD  
HEALTH SYSTEM,

No. 260743  
Wayne Circuit Court  
LC No. 02-242394-NH

Defendant-Appellee.

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Before: Cavanagh, P.J., and Markey and Meter, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals as of right from the trial court's order granting summary disposition to defendant under MCL 2.116(C)(10). Plaintiff's lawsuit stems from the circumstances surrounding the birth of her son. We affirm.

In the 38th week of her pregnancy, plaintiff went to Henry Ford Hospital after experiencing contractions. The baby was positioned with its back to the mother's cervix, so defendant's doctors manually rotated the baby through a procedure called an external cephalic version<sup>1</sup> to facilitate vaginal delivery. Once rotated, the baby turned again and had to be repositioned. After the second version, the attending doctors decided to induce labor and gave plaintiff Pitocin. The child was born with significant brain damage.

After plaintiff sued defendant for malpractice, the trial court granted defendant's motion for summary disposition, concluding that plaintiff's theory of how the baby's brain was injured – by way of compressive forces – was not sufficiently linked to the alleged violation of the standard of care, i.e., the failure to examine fetal monitor readings properly and perform an earlier delivery by Cesarean section.

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<sup>1</sup> A "version" is a "[c]hange of position of the fetus in the uterus." *Stedman's Medical Dictionary* (26 ed, 1995).

This Court reviews grants of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion brought under MCR 2.116(C)(10), a court “must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party.” *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). Summary disposition is appropriate if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law.” MCR 2.116(C)(10).

A plaintiff is required to prove four elements in order to make out a prima facie case of medical malpractice:

(1) the appropriate standard of care governing the defendant’s conduct at the time of the purported negligence, (2) that the defendant breached that standard of care, (3) that the plaintiff was injured, and (4) that the plaintiff’s injuries were the proximate result of the defendant’s breach of the applicable standard of care. [*Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004).]

MCL 600.2912a provides that the plaintiff in a medical malpractice case has the burden of proving that the defendant breached the recognized standard of care and that the breach proximately caused an injury.

In her appellate brief, plaintiff argues that “the harm sought to be avoided by earlier delivery by C-section was injury to the fetal brain.” She states that “the trial court reversibly erred by not recognizing the ultimate harm that befell the minor plaintiff, brain injury, as a foreseeable consequence of defendant’s physician’s [sic] negligent failure to have earlier delivered the infant by C-section.” She goes on to argue:

The fact that the harm – brain injury – was thereafter brought about by the compressive forces and trauma of a “non-negligent” prolonged labor, augmented and intensified by Pitocin, did not relieve the defendant’s physicians from liability for their negligence.

Plaintiff’s appellate argument is without merit. Plaintiff’s “standard of care” evidence indicated that delivering the child earlier by way of a Cesarean section was warranted because the fetal monitor readings indicated a likelihood that insufficient oxygen was reaching the fetus. However, plaintiff’s “causation” evidence indicated that the child’s brain damage resulted from compressive forces applied to the fetus during labor and delivery. Accordingly, there was a disconnect between the two categories of evidence. As noted earlier, to establish a cause of action for medical malpractice, a plaintiff must demonstrate “that the . . . injuries were the proximate result of the defendant’s breach of the applicable standard of care.” *Craig, supra* at 86. Plaintiff did not do so here. While the failure to deliver the child earlier by way of a Cesarean section was a “but-for” cause of the child’s brain damage, it was not a *proximate* cause of the damage. See *id.* at 86-87. “[L]egal cause or ‘proximate’ cause normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences.” *Id.* at 87 (citation and quotation marks omitted). There is

no reason to conclude that it was foreseeable that failing to examine the fetal monitor readings properly and deliver the child by Cesarean section would result in *harmful* compressive forces that would ultimately damage the child's brain. Accordingly, the trial court properly granted summary disposition to defendant.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Patrick M. Meter